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Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO.
10/774,157 02/06/2004 Lukas Eisermann PC888.00/31132.123 7280

46333 7590 03/05/2007
HAYNES AND BOONE, LLP
901 MAIN ST
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DALLAS, TX 75202

EXAMINER

PHILOGENE, PEDRO

ART UNIT PAPER NUMBER

3733

Table with 3 columns: SHORTENED STATUTORY PERIOD OF RESPONSE, MAIL DATE, DELIVERY MODE
3 MONTHS 03/05/2007 PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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Office Action Summary

Application No. 10/774,157	Applicant(s) EISERMANN ET AL.	
Examiner Pedro Philogene	Art Unit 3733	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 20 February 2007.
- 2a) This action is **FINAL**.
- 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-3 and 5-39 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 1-3,5-22 and 30-39 is/are allowed.
- 6) Claim(s) 23-25 is/are rejected.
- 7) Claim(s) 26-29 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 - Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 - Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 - 1. Certified copies of the priority documents have been received.
 - 2. Certified copies of the priority documents have been received in Application No. _____.
 - 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application
- 6) Other: _____

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Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 23-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Huppert et al. (WO 03/039400).

With respect to claim 23 Huppert et al disclose a prosthetic device for anterior-oblique insertion into an intervertebral space, comprising a first component (112) comprising a first articular surface and opposed first bearing surface, a first flange (2') extending from the bearing surface, the first flange being angled relative to the to the longitudinal and transverse axes of the first components; as best seen in FIG.4, a projection (13) extending from the first articular surface; and a second component (111) comprising a second articular surface and an opposed second bearing surface; a second flange (2) extending from the second bearing surface the second flange being angled relative to the longitudinal and transverse axes of the second component; as best seen in FIG.4, as set forth in page 2, lines 2, 6, 16-24, page 6, lines 9-13, page 7, lines 11-19, 29-31 a recess, as best seen in FIG.3, formed in the second articular surface, the recess being adapted to engage with the projection to provide for articulating motion between the first and second components.

With respect to claims 24,25, Huppert et al disclose all the limitations; as set forth; for example, the flange adapted to be positioned within a preformed anterior-oblique opening, as best seen in FIG.4.

Allowable Subject Matter

Claims 26-29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 1-3,5-22,30-39 are allowed.

Prosecution on the merits of this application is reopened on claims 23-29 considered unpatentable for the reasons indicated below:

After further consideration the examiner believes that claims 23-25 are unpatentable over Huppert et al for the reasons set forth above.

Response to Amendment

Applicant's arguments, see Remarks, filed 2/20/07, with respect to the rejection(s) of claim(s) 1-3, 5-22, 30-39 under 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Huppert et al.

Conclusion

A shortened statutory period for reply to this action is set to expire THREE MONTHS from the mailing date of this action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-

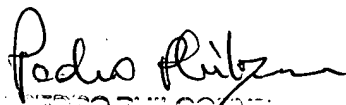
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4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Pedro Philogene
March 1, 2007



PEDRO PHILOGENE
EXAMINER